
(2015) 07 JH CK 0008
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 104 of 2009

K.D. Diwan and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-07-2015

Acts Referred:

Constitution of India, 1950 — Article 20(1)
Electricity Act, 2003 — Section 146, 149
Mines Act, 1952 — Section 17, 18, 2(1), 2(1)(1), 2(k)

Citation : (2015) 07 JH CK 0008

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Pandey Neeraj Rai, for the Appellant

Final Decision : Disposed off

Judgement

Rakesh Ranjan Prasad, J.—Heard learned counsel appearing for the petitioners and learned counsel appearing for the respondents.

2. This application has been filed on behalf of the petitioners No. 1 and 2 for quashing of the entire criminal proceeding of C-2 Case No. 12 of 2009 including the order dated 20.01.2009 whereby and whereunder cognizance of the offence punishable under Section 146 of the Electricity Act, 2003 has been taken against the petitioners and others.

3. At the outset, it be stated that this application has been filed on behalf of the two petitioners but now it would confine to petitioner No. 1, as according to learned counsel appearing for the petitioner, he would not be pressing this application so far as petitioner No. 2 is concerned, rather will be seeking liberty to file an appropriate application for redressal of his grievances at an appropriate stage.

4. Before adverting to the submissions advanced on behalf of the parties, the case of the prosecution, needs to be taken notice of:-

A complaint bearing C-2 Case No. 12 of 2009 was lodged against the petitioner and other accused persons wherein it has been alleged that on receiving information that one person has died on account of being electrocuted at Surda Coper Mines on 02.04.2008, the Deputy Director of Mines Safety (Electrical)-cum-Inspector of Mines (Electrical) as well as Electrical Inspector, made inspection of Mosabani Concentrator Plant of Surda Copper Mine on 07, 08 and 09 April, 2008 to enquire into the cause and circumstances, which led to the accident whereby three persons got electrocuted while they were working on 3.3. KV switchgear panel without taking proper shutdown, discharging the panel and making the panel earthed. During enquiry, certain contraventions of the Indian Electricity Rule, 1956 were found. So far as this petitioner is concerned, following contraventions of the aforesaid rule was found:-

1. In contravention of the provision of Rule 3(2) of the Indian Electricity Rule, 1956 and Rule 45(1) and (2) of the Indian Electricity Rule, 1956, accused Nos. 1, 2 and 3 failed to appoint necessary competent persons possessing an appropriate certificate of competency.
2. In contravention of the provision of Rule 131 of the Indian Electricity Rule, 1956, read with Rule 45(1) and (2) of the Indian Electricity Rule, 1956, accused No. 1, 2, and 3 failed to appoint Electrical Supervisor and Electricians holding an appropriate certificate of competency.
5. On such accusation, when the cognizance of the offence punishable under Section 146 of the Indian Electricity Act, 2003 was taken against the accused persons including the petitioner vide order dated 20.01.2009, that order was challenged by way of this application.
6. Mr. Pandey Neeraj Rai, learned counsel appearing for the petitioner submits that the petitioner, being the Director, cannot be proceeded with the prosecution even if there had been any contravention of the provision of the Rule as the petitioner being the Director was not responsible to carry out the mandate as stipulated in the aforesaid rules.
7. Learned counsel, by referring to Rule 3 of the Indian Electricity Rules, 1956, speaking about the "authorization", submits that the authorization, in terms of the provision under Rule 3, can be made by a Supplier, or a consumer, or the owner, agent or manager of a mine but the petitioner being one of the Directors cannot be said to be either a supplier or a consumer, owner, agent or manager of the mine.
8. In this regard, learned counsel by referring to Section 2(l) of the Mines Act, 1952 defining "owner" submits that immediate proprietor or lessee or occupier of the mines will also be falling within the definition of "owner". It was pointed out that the "occupier has not been defined under the Mines Act, 1952, but the Hon"ble Supreme Court in a case of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., AIR 1961 SC 838 : (1961) 3 FLR 241 : (1961) 2 LLJ 146 : (1962) 1 SCR 9 where the question incidentally fell for consideration

as to who could be termed as occupier under the Mines Act, has been pleased to hold that from the very collocation of the word "Immediate proprietor or lessee or occupier of the mines", it is abundantly clear that only a person whose occupation is of the same character, that is occupation by a proprietor or a lessee by way of possession on his behalf and not on behalf of somebody else is meant by the word "occupier" in the definition. Their Lordships have gone to hold that the Director/Agent cannot be said to be the occupier and thereby, the petitioner, being one of the Directors, cannot be said to be responsible for carrying out duties and responsibilities enshrined under Rule 3(1), 45(1) of the Indian Electricity Rules, 1956 and Section 131 of the Indian Electricity Rules, 1956.

9. Further submission is that in the face of the aforesaid proposition laid down by the Hon'ble Supreme Court in the case referred to above, it would be the owner, who would be responsible for carrying out the provision of the aforesaid Rules. In any event, the petitioner, being the Director, cannot be prosecuted in absence of a Company being made accused and that too, in absence of any allegation that the petitioner, being the Director, was responsible for day-to-day affairs of the business of the company, which proposition has been laid down by the Hon'ble Supreme Court in a case of Sharad Kumar Sanghi Vs. Sangita Rane(2015) 2 JCC 1277 : (2015) 2 RCR(Criminal) 120 : (2015) 3 SCALE 126 . Thus, it was submitted that the prosecution against the petitioner is wholly unwarranted and thereby, order taking cognizance is fit to be set aside.

10. As against this, Mr. Rajeev Sinha, learned Assistant Solicitor General of India, submits that the "owner" has also been defined under the Rule 2(aj) of the Indian Electricity Rules, 1956, wherein it has been stipulated that the owner, agent and manager have the same meanings as are assigned to them in the Mines Act, 1952 and under the Mines Act, 1952 "owner" has been defined in Section 2(l) wherein owner has been defined as any person who is immediate proprietor or lessee or occupier and, thereby, in terms of the provision of Section 76 of the Mine Act, 1952, the Company as well as Director of the Company, would not only be responsible for the contravention of the provision of the Mines Act and the Rules framed thereunder, but also under the Indian Electricity Rules, 1956 and thereby, order taking cognizance never warrants to be quashed, as this petitioner, being the Director would be responsible for carrying out the duties and obligations as has been enshrined under Rules 3(1), 45(1) and 131 of the Indian Electricity Rules, 1956, and hence, order taking cognizance never warrants to be quashed.

11. In the context of the submission advanced on behalf of the parties, one needs to take notice of Rule 3(1) of the Indian Electricity Rules, 1956, which reads as follows:-

3. Authorization: (1) A supplier or a consumer, or the owner, agent or manager of a mine, or the agent of any company operating in an oil-field or the owner of a drilled well in an oilfield or a contractor for the time being under contract with a supplier or a consumer to carry out duties incidental to the generation,

transformation, transmission, conversion, distribution or use of energy may authorise any person for the purpose of any or all of the following: Sub-rule (2) of Rule 36, clause (a) of sub-rule (1) of Rule 51, clause (a) of sub-rule (1) [and [clauses (h) and (i) of sub-rule (2) of Rule 64], sub-rule(2) of Rule 110, sub-rules (1) and (4) of Rules 121, sub-rule (4) of Rule 123, Rule 124 and sub-rule (8) of Rule 25.

12. At the same time, rule 45 of the Indian Electricity Rules, 1956, also needs to be taken notice of, which reads as follows:-

45. Precautions to be adopted by consumer, owners, [occupiers], electrical contractors, electrical workmen and suppliers. (1) No electrical installation work, including additions, alternations, repairs and adjustments to existing installations, except such replacement of lamps, fans, fuses, switches, low voltage domestic appliances and fittings as in no way alters its capacity or character, shall be carried out upon the premises of or on behalf of any [consumer, supplier, owner or occupier], for the purpose of supply to such consumer, owner, [or occupier] except by an electrical contractor licensed in this behalf by the State Government and under the direct supervision of a person holding a certificate of competency [and by a person holding a permit] issued or recognized by the State Government:

PROVIDED that in the case of works executed for or on behalf of the Central Government and in the case of installations in mines, oil-fields and railways, the Central Government and in other cases the State Government may, by notification in the Official Gazette, exempt, on such conditions as it may impose, any such work described therein either generally or in the case of any specified class of [consumers, suppliers, owners or occupiers], from so much of this sub-rule as requires such work to be carried out by an electrical contractor licensed by the State Government in this behalf.

[(2) No electrical installation work which has been carried out in contravention of sub-rule (1) shall either be energized or connected to the works of any supplier.]

13. In terms of the said provision, duties and obligations fixed under those rules are to be carried out either by supplier, a consumer, an owner, agent, occupier or manager of the mine. Still this petitioner, who was one of the Directors, at the relevant point of time, is being prosecuted by taking him as nominated owner. In that event, it is to be considered as to whether the petitioner being the Director would fall within the definition of the "owner"?

14. "Owner" has been defined in terms of Section 2(l) of the Mines Act, 1952 which reads as follows:-

2(l) "owner", when used in relation to a mine, means any person who is the immediate proprietor or lessee or occupier of the mine or of any part thereof and in the case of a mine the business whereof is being carried on by a liquidator or receiver, such liquidator, or receiver but does not include a person who merely

receives a royalty, rent or find from the mine, or is merely the proprietor of the mine, subject to any lease, grant or licence for the working thereof, or is merely the owner of the soil and not interested in the minerals of the mine; but [any contractor or sub-lessee] for the working of a mine or any part thereof shall be subject to this Act in like manner as if he were an owner, but not so as to exempt the owner from any liability;

15. From its perusal, it appears that the owner includes immediate proprietor or lessee or occupier of the mine or of any part thereof but occupier has not been defined under the Mines Act. However, the question incidentally fell for consideration before the Hon"ble Supreme Court in case of Chief Inspector of Mines (supra) as to who could be termed as occupier under the Mines Act. Their Lordships did hold as under:-

(5) The appeals Nos. 100 and 101 need not detain us long. For whatever be the controversy on other questions as regards the Regulations of 1926 being in force after the repeal of the Mines Act of 1923 and as regards the alleged violation of Art. 20(1) of the Constitution, there is no manner of doubt that the High Court is right in holding that the managing agents of the colliery company are neither the "owner of the coal mines nor the "manager nor "agent thereof. It was not even suggested before us that the managing agents are either managers or agents. "Agent has been defined in the Act as the representative of the owner in respect of the management, control and direction of the mines and managing agent of the company in no sense falls within this definition. "Manager is not defined, but S. 17 of the Act provides that every mine shall be under one manager who shall have the prescribed qualifications and shall be responsible for the control, management, supervision and directions of the mines, and the owner and agent of every mine shall appoint himself or some other person having such qualifications to be such manager. In the Amlabad Colliery Mr. Kumud Ranjan Dutt was admittedly appointed the manager and it was on that basis that proceedings were commenced against him. The managing agent of the company was not and could not be the manager of the Amlabad Colliery. It was urged however that the managing agents of the colliery company are in occupation of the mines and thus fall within the definition of the word "owner in S. 2(k) (Sic. S. 2(1)(1)) of the Act. The relevant portion of the definition of owner in S. 2(1)(1) runs thus: "'Owner when used in relation to a mine, means any person who is the immediate proprietor, or lease, or occupier of the mine or of any part thereto. The argument is that the managing agents exercise, by reason of their being managing agents of the colliery company, possession over the mine; and so "occupy the mine. Though the word "occupier is not defined in the Act it is patently absurd to suppose that any and every person exercising possession over the mine, is an "occupier and thus an owner of the mine, for the purpose of the Mines Act. From the very collocation of the words "immediate proprietor, or lessee or occupier of the mine, it is abundantly clear that only a person whose occupation is of the same character, that is, occupation by a proprietor or a lessee-by way of possession on his behalf and not on behalf of somebody else is

meant by the word "occupier in the definition. Thus, a trespasser in wrongful possession to the exclusion of the rightful owner would be an occupier of the mine, and so be an "owner for the purposes of the Act. When however a servant or agent of the proprietor or lessee of a mine is in possession of a mine, he is in possession on behalf of his master or his principal, and not on his own behalf. It would be unreasonable to think that the legislature intended such servants or agents liable and responsible as "owner of the mine. If possession on behalf of another was sufficient to make a person "occupier within the meaning of S. 2(1), every manager would be an occupier and thus have all the responsibilities of an "owner. Many "agents of the proprietors or lessee of the mine would similarly be "occupier and therefore "owner. If that had been the intention of the legislature it would have been unnecessary and indeed meaningless to mention "agent and "manager in addition to the word "owner in S. 18 of the Act, in the important provision as to who will be responsible for the proper carrying on of operations in the mine in regard to the provisions of the Act and Regulations and bye-laws and orders made thereunder."

16. Thus, from perusal of the said proposition laid down by the Hon"ble Supreme Court, it is evidently clear that occupier cannot be termed as owner of mines. In that view of the matter, the Director of a Company will not fall within the definition of owner as has been defined either under Indian Electricity Act or under the Mines Act. Still, the petitioner being the Director of the Company is being prosecuted for not carrying out the duties and the obligations, as has been enshrined either in Rule 3(1) and 45(1) of the Indian Electricity Rules, 1956 or Rule 131 of the Indian Electricity Rules, 1956 though the Directors in terms of aforesaid rules and the Act are never responsible for carrying out the duties and responsibilities.

17. However, the submission, which has been advanced on behalf the Union of India is that since Company is the owner of mines, all or any of the Directors thereof would be liable to be prosecuted under the Indian Electricity Act in view of the provision as enshrined in Section 76 of the Mines Act stipulating therein that not only the owner/company is liable to be prosecuted but also its Directors.

18. The submission advanced does not appear to be tenable as Section 76 of the Mines Act, does speak about the prosecution of the owner as well as its Director for commission of the offence under the Mines Act. The said provision reads as follows:-

76. Determination of owner in certain cases. - Where the owner of a mine is a firm or other association of individuals, all or any of the partners or members thereof or where the owner of a mine is a company, all or any of the directors thereof or where the owner of a mine is a Government or any local authority, all or any of the officers or persons authorised by such Government or local authority, as the case may be, to manage the affairs of the mine, may be prosecuted and punished under this Act for any offence for which the owner of a mine is punishable:

[Provided that where a firm, association or company has given notice in writing to the Chief Inspector that it has nominated.-

(a) in the case of a firm, any of its partners or managers;

(b) in the case of an association, any of its members or managers;

(c) in the case of a company, any of its directors or managers, who is resident, in each case in any place to which this Act extends and who is in each case either in fact in charge of the management of, or holds the largest number of shares in such firm association or company, to assume the responsibility of the owner of the mine for the purposes of this Act, such partner, member, direction or manager, as the case may be, shall, so long as he continues to so reside and be in charge or hold the largest number of shares as aforesaid, be deemed to be the owner of the mine for the purposes of this Act unless a notice in writing cancelling his nomination or stating that he has ceased to be a partner, member, director or manager, as the case may be, is received by the Chief Inspector]

Explanation. - Where a firm, association or company has different establishments or branches or different units in any establishment or branch, different persons may be nominated under this proviso in relation to different establishments or branches or units and the person so nominated shall, with respect only to the establishment, branch or unit in relation to which he has been nominated, be deemed to be the owner of the mine.]

19. On perusal of the aforesaid provision, it is evidently clear that apart from Company, its Director is also liable to be prosecuted under the Mines Act for the contravention of the provision of the Act provided the said Director has been nominated by the Company, notice of which has been given to the Chief Inspector. But the case in hand relates to prosecution under the Electricity Act, which does have provision as contained in Section 149 of the Electricity Act, 2003 relating to offences by Companies. That reads as follows:-

149. Offences by Companies. (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty having committed the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer

shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this Section.-

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

20. Under the aforesaid provision, vicarious liability has been fixed upon any person which would also include the Director but for prosecuting them, the complaint must come with requisite allegation that the Director was responsible for day to day affairs of the Company. In the instant case, no such allegation has been imputed in the complaint and thereby the prosecution of the petitioner is quite illegal. On other ground also, the prosecution of the petitioner is bad as admittedly, the Company has not been made accused. In such event, the petitioner is not liable to be prosecuted. Such proposition has been laid down by the Hon"ble Supreme Court in the cases of S.K. Alagh Vs. State of U.P. and Others, AIR 2008 SC 1731 : (2008) 4 BC 622 : (2008) 142 CompCas 228 : (2008) CriLJ 2256 : (2008) 2 JT 540 : (2008) 2 SCALE 523 : (2008) 5 SCC 662 : (2008) AIRSCW 2389 : (2008) 2 Supreme 152 , Maharashtra State Electricity Distribution Co. Ltd. and Another Vs. Datar Switchgear Ltd. and Others, (2010) 159 CompCas 545 : (2011) CriLJ 8 : (2010) 11 JT 252 : (2010) 10 SCC 479 : (2011) 1 SCC(Cri) 68 : (2011) 105 SCL 223 : (2010) 9 UJ 4480 , GHCL Employees Stock Option Trust Vs. India Infoline Ltd., (2013) 4 AD 186 : AIR 2013 SC 1433 : (2013) 114 CLA 245 : (2013) 177 CompCas 527 : (2013) CriLJ 2044 : (2013) 2 Crimes 233 : (2013) 2 JCC 1347 : (2013) 4 JT 567 : (2013) 2 RCR(Criminal) 519 : (2013) 4 SCALE 598 : (2013) 4 SCC 505 : (2013) AIRSCW 1906 : (2013) 3 Supreme 151 and recently in case of Sharad Kumar Sanghi Vs. Sangita Rane(2015) 2 JCC 1277 : (2015) 2 RCR(Criminal) 120 : (2015) 3 SCALE 126 .

21. Accordingly, entire criminal proceeding of C-2 Case No. 12 of 2009 including the order dated 20.01.2009 is, hereby, quashed so far petitioner No. 1 is concerned.

22. So far petitioner No. 2 is concerned, his application is dismissed as not pressed. However, he would be at liberty to put forth his point before the court below at an appropriate stage.

23. Thus, this application stands disposed of.